

REMARKS

Claims 32, 34, 40 and 64-80 presently appear in this case. No claims have been allowed. The official action of September 2, 2003, has now been carefully studied. Reconsideration and allowance are hereby respectfully urged.

Briefly, the present invention relates to a method of lessening retinal ganglion cell (RGC) death and/or lessening damage to the optic nerve arising from glaucoma, increased intraocular pressure or glutamate toxicity by administering an effective amount of poly-Glu,Tyr.

The examiner states that newly submitted claims 36, 39, 41, 44, 45, 46, 47, 49, 51, 52, 55, 57, 61, 62 and 63 are directed to an invention that is independent or distinct from the invention as applicant originally elected, i.e., Group I with glaucoma as the species. The examiner considers the originally presented invention to have been elected and that all of these claims are withdrawn from consideration as being directed to a non-elected invention.

Presently amended claims 32, 34, 40 and 64-66 are directed only to the elected invention, Group I. As to the particular species of condition being treated, claim 32 is drawn only to those conditions that the examiner concedes to

be enabled and which are generic to glaucoma. Accordingly, all of the species of claim 32 and those claims which depend from claim 32 should be in condition for allowance.

As the examiner has stated that upon reaching allowable subject matter, rejoinder will be considered, new claims 67-80 have now been added that are generic to the administration of poly-Glu,Tyr in order to cause T cells activated by poly-Glu,Tyr to accumulate at the site of injury and to the administration of activated T cells for the same purpose. In view of the fact that, for the reasons discussed below, the claims to the administration of poly-Glu,Tyr are now allowable, i.e., the claims are directed specifically only to those conditions that the examiner considers enabled and there is no art rejection, it is requested that the examiner consider rejoinder as stated in the previous official action, so that the generic claims 67-72 can be considered, as well as the claims specifically directed to the administration of activated T cells, i.e. claims 73-80.

Claims 32-35, 37, 38, 40, 42, 43, 48, 50, 53, 54, 56 and 58-60 have been objected to as they recite non-elected subject matter.

Claims 32, 34, 40 and 64-66 are now directed only to the elected invention. As the elected species of glaucoma (more specifically optic nerve damage arising from glaucoma) has been found to be allowable for the reasons to be discussed below, the other species claimed should be rejoined and the objection withdrawn. Furthermore, as claims 32, 34, 40 and 64-66 are allowable for the reasons to be discussed below, rejoinder of claims 67-80 should be granted, in which case this objection must be withdrawn.

If, after consideration of rejoinder, the examiner determines that claims 67-80 cannot be rejoined, then it is requested that these claims be deleted by examiner's amendment so that only the remaining allowable claims will be in the case and this application can proceed to issue.

Claims 32-35, 37, 38, 40, 42, 43, 48, 50, 53, 54, 56 and 58-60 have been rejected under 35 U.S.C. §112, paragraph 1, as failing to comply with the enablement requirement. The examiner explicitly states that the claims are enabling for "a method of lessening retinal ganglion cell (RGC) death and/or lessening damage to the optic nerve arising from a group consisting of glaucoma, increased intraocular pressure, and glutamate toxicity comprising administration of an effective

amount of poly-Glu,Tyr." The examiner states, however, that the specification does not reasonably provide enablement for reducing secondary neuronal degeneration or for reducing secondary neuronal degeneration that follows the primary neuronal damage of an injury, or ameliorating the effects of an injury or disease that causes neuronal degeneration of the central or peripheral nervous system.

In order to place the case into condition for allowance and to obviate this rejection, applicant has decided to accept a recitation of conditions which the examiner concedes to be enabled by the supporting disclosure. Accordingly, claim 32 is now worded substantially as indicated to be enabled by the examiner. The body of the claim is worded similarly to the wording of previous claim 42. Accordingly, it is believed that claim 32 is not subject to this enablement rejection. Dependent claims 34, 40 and 64-66 are directed only to individual species as claimed in claim 32. Accordingly, these claims as well are conceded by the examiner to have been enabled by the specification.

It should be noted that the deletion of the other species is without prejudice to the continued prosecution of the broader claims in a continuing application.

New claims 67-80 are also directed only to the conditions that are set forth in claim 32, but are more broadly directed to the generic invention (claims 67-72) and the non-elected species of administering T cells (claims 73-80). The examiner concedes that the invention is enabled for the administration of poly-Glu,Tyr for the treatment of these conditions. The specification explains and proves that poly-Gly,Tyr is effective because it causes activation of T cells thereagainst *in vivo*, which T cells then travel to the site of injury and cause the therapeutic effect. Accordingly, rejoinder of claims directed to the direct administration of T cells activated *ex vivo* by poly-Glu,Tyr and administered for the same purpose should be granted, particularly in view of the presence of generic claims. It would be expected that if the administration of poly-Glu,Tyr works for the specified conditions then the administration of T cells activated by poly-Glu,Tyr will work for the same purpose. Accordingly, it is urged that claims 67-80 are also fully enabled by the specification for the same reason that the examiner considers that the claims directed to the treatment of these conditions by the administration of poly-Glu,Tyr is enabled.

In re of Appln. No. 09/893,344
Amd. dated March 31, 2004
Reply to Office action of September 2, 2003

Reconsideration and withdrawal of this rejection with respect
to all of the present claims is therefore respectfully urged.

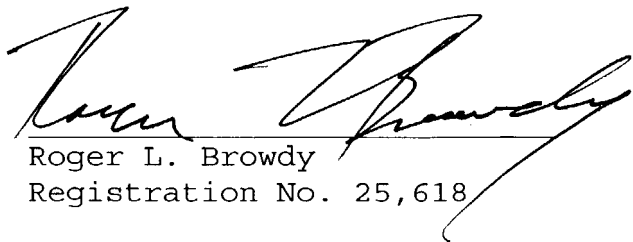
Claim 43 has been rejected under 35 U.S.C. §112,
paragraph 2, as being indefinite.

Claim 43 has now been deleted, thus obviating this
rejection.

It is submitted that all of the claims now present
in the case fully comply with 35 U.S.C. §112. Reconsideration
and allowance of claims 32, 34, 40 and 64-66 directed to the
elected invention and, in light of these allowable claims,
reconsideration of the restriction requirement, rejoinder and
allowance of all of claims 67-80 are earnestly solicited.

Respectfully submitted,

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